UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/27
17 January 1996

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 7 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Economic and Council resolution 1995/254

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INTRODUCTION

1. The General Assembly, in resolution 49/150 of 23 December 1994, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure by legislative measures that their territory and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries or for the planning of activities designed to destabilize or overthrow the Government of any State, threaten the territorial integrity of sovereign States or to fight the national liberation movements struggling against colonial domination and foreign intervention or occupation. The General Assembly also urged all States to cooperate with the Special Rapporteur in the fulfilment of his mandate.

2. In resolution 1995/5 of 17 February 1995, the Commission on Human Rights, inter alia, reaffirmed that the recruitment, use, financing and training of mercenaries should be considered offences of grave concern to all States (para. 1). The Commission urged all States to prevent mercenaries from using any part of their territory to destabilize any sovereign State (para. 2) and called upon all States that had not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 3). The Commission decided to extend the mandate of the Special Rapporteur for three years (para. 4) and requested him to report to the Commission at its fifty-second session on his activities (para. 7). The Commission also urged all States to cooperate with the Special Rapporteur in the fulfilment of his mandate (para. 8), in particular by providing credible and reliable information (para. 5).

3. In decision 1995/254 of 25 July 1995, the Economic and Social Council approved the Commission's decision to extend for three years the mandate of the Special Rapporteur and requested the Secretary-General to provide him with all necessary assistance.

4. Pursuant to the provisions of Commission on Human Rights resolution 1995/5 and Economic and Social Council decision 1995/254, the Special Rapporteur has the honour to submit for consideration by the Commission his seventeenth report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

5. The Special Rapporteur submitted his report to the Commission on Human Rights (E/CN.4/1995/29) on 1 February 1995, at the 5th meeting of its fifty-first session. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He also held coordination meetings with the Centre for Human Rights.

6. The Special Rapporteur returned to Geneva on three occasions, from 29 May to 2 June 1995, from 31 July to 4 August 1995 and from 11 to 15 December 1995, in order to hold a number of consultations, to participate in the meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, which took place from 29 to 31 May 1995, and to draft the reports to be submitted to the General Assembly and to the Commission.

7. The Special Rapporteur submitted his report to the General Assembly (A/50/390 and Add.1) on 16 October 1995.

B. Correspondence

8. Pursuant to the provisions of General Assembly resolution 49/150 of 23 December 1994 and Commission on Human Rights resolution 1995/5 of 17 February 1995, the Special Rapporteur sent a communication dated 8 May 1995 to all States Members of the Organization, requesting the following information:

> "(a) Information relating to the possible existence of activities of mercenaries which, in violation of the sovereignty and laws of their countries, might have occurred or be occurring in their territory (recruitment, financing, training, assembly, transit or use of mercenaries);
>
> (b) Information relating to the possible existence of activities of mercenaries in the territory of another country which impair or may impair the sovereignty of their State and the exercise of the right of their people to self-determination;
>
> (c) Information relating to the possible existence of activities of mercenaries in their territory or in the territory of another State which are associated with the performance of illegal international acts such as terrorist attacks, drug and arms trafficking, smuggling and other activities which impair the constitutional stability of their Governments and the enjoyment of human rights by their population;
>
> (d) Information relating to the possible existence of activities of mercenaries in the territory of another country which impair or may impair the sovereignty of other countries in their subregion, region or continent and the exercise of the right of other peoples to self-determination;
>
> (e) Information on domestic legislation currently in force and international treaties to which their country is party relating to the prohibition of activities of mercenaries and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;
>
> (f) Their Government's position on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly (resolution 44/34 of 4 December 1989);

(g) Suggestions which, in their Government's opinion, might be useful in refining the international approach to the subject of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination."

9. The replies provided by Mr. Roberto Robaina González, Minister for Foreign Affairs of the Republic of Cuba, by the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, and by the Permanent Mission of Sri Lanka to the United Nations Office at Geneva were reproduced in the recent report by the Special Rapporteur to the General Assembly (A/50/390, paras. 10, 11 and 9 respectively). In the addendum to that report (A/50/390/Add.1) the letters sent to the Special Rapporteur by Mr. Vartan Oskanian, Deputy Minister for Foreign Affairs of the Republic of Armenia, Mr. Mate Granic, Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Croatia, and by Mr. Miroslav Milosevic, Counsellor, Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, were also reproduced.

10. The Special Rapporteur also received replies from the Governments of Ecuador (1 June 1995), Laos (8 June 1995), Latvia (29 May 1995), Mexico (11 July 1995), Myanmar (24 July 1995), Namibia (22 June 1995), Palau (3 July 1995), San Marino (31 May 1995) and Uruguay (6 June 1995).

11. The communications from the Governments of Ecuador, Mexico and Uruguay referred, inter alia, to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Uruguay also described those provisions of its domestic legislation which could be applicable to the suppression of mercenary activities.

12. Subsequent to the preparation of his report to the General Assembly, the Special Rapporteur was informed of a note verbale, dated 28 July 1995, addressed to the Centre for Human Rights by the Ministry of Foreign Affairs of the Republic of Chad. The note verbale reads as follows:

"Chad has had bitter experience of mercenaries on account of its territorial conflict with Libya and the civil war engendered by that conflict. Those wars were responsible for the loss of more than 40,000 lives.

Chad is anxious to preserve good neighbourly relations and to refrain from interfering in domestic affairs; accordingly it deplores the support given by certain countries to opposition movements which constitute a danger to security. It goes without saying that opposition movements are frequently accompanied by arms and drug trafficking and by smuggling.

With regard to points (e), (f) and (g) of the above note, subsequent to the National Sovereign Conference, Chad made a commitment to settle armed conflicts by peaceful means. It also prohibited anyone from resorting to force to gain power.

Chad fully subscribes to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly of the United Nations on 4 December 1989.

Regarding measures to be taken, Chad is in favour of severe sanctions, ranging from boycott to military action and economic embargo, against countries that use mercenaries as a means of violating human rights.

As to the suggestions requested in the note, all flashpoints in domestic or external conflicts should be identified, investigations carried out and information obtained."

13. The Permanent Mission of the Kingdom of Nepal to the United Nations Office at Geneva transmitted to the Centre for Human Rights a note verbale dated 25 August 1995, in which it stated:

"(a) No mercenary activities have been recorded in Nepal that violate her sovereignty and the law of the land.

(b), (c) and (d)

There is no information of mercenary activities in any country which affect the sovereignty of Nepal.

(e) There is no domestic legislation in or treaties signed with any country by Nepal that undermine the sovereignty of any State or the exercise of the right of peoples to self-determination.

(f) His Majesty's Government of Nepal has taken a positive view on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Convention is under its consideration.

(g) His Majesty's Government of Nepal respects the exercise of the right of peoples to self-determination in all countries, and opposes the violation of human rights in any country through the use of mercenaries. At the same time, it would like to point out that a treaty between two States for the use and employment of manpower on a reciprocal basis should be taken into consideration in this respect."

14. In a note verbale dated 10 August 1995, the Permanent Mission of Paraguay to the United Nations Office at Geneva transmitted to the Centre for Human Rights a document containing information prepared by the Directorate-General for Human Rights subordinate to the Ministry of Justice and Labour. According to that document, no mercenaries are recruited, financed, trained, assembled or used in Paraguay or pass through the country in transit. Nor is the Government of Paraguay aware of mercenary activities in other countries that might or do affect the exercise by the people of Paraguay of their right to self-determination. According to the document, the question of mercenaries "is irrelevant to the present circumstances and history of the Republic of Paraguay". The recently adopted Constitution (approved on 20 June 1992) stipulates in article 42, in fine, that "Secret associations and associations

of a paramilitary nature are prohibited". Article 172 of the Constitution states that the forces of law and order consist exclusively of the military and police forces. In addition, article 126 states that political parties and movements may neither receive economic aid, orders or instructions from foreign organizations or States, nor establish structures which, directly or indirectly, entail the use or advocacy of violence as a political instrument.

15. The Chargé d'Affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations, Mr. Vladislav Jovanovic, sent the Special Rapporteur the following letter dated 23 October 1995:

> "Upon the instructions of my Government, I am writing to you concerning the letter dated 30 June 1995 from the Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Croatia addressed to you (A/50/390/Add.1). Since the letter contains allegations that misrepresent the role of the army of Yugoslavia, for the sake of truth I have the honour to state the following.
>
> The above unsubstantiated claims of the Croatian side represent yet another attempt to discredit the peaceful policy of the Federal Republic of Yugoslavia, particularly at a time when my country is making a constructive contribution in finding a peaceful solution to the crisis in the previous Yugoslavia.
>
> The units of the army of Yugoslavia have not at any time left the territory of the Federal Republic of Yugoslavia nor threatened the territorial integrity of its neighbours, including that of Croatia as well.
>
> No military material, weapons or military equipment was sent to the army of the Republic of Serb Krajina (RSK) from the Federal Republic of Yugoslavia. Only humanitarian and medical assistance was rendered.
>
> The army of Yugoslavia did not take part or engage in mobilization for the army of the RSK. Military officers, born in the territory of the RSK, whose names were contained in the letters of the Croatian representatives to the Secretary-General, were already discharged from the army of Yugoslavia. Since they were born in the territory of the RSK, they joined their army to defend their ancestral homes.
>
> By levying the charges against the Federal Republic of Yugoslavia, Croatia is covering up the involvement of its own regular troops in the military operations in Bosnia and Herzegovina, including the latest aggression against the Republic of Srpska."

16. In a letter dated 31 October 1995, the Permanent Representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, Mr. Vladimir Pavicevic, sent the Special Rapporteur the following information compiled by his Government:

> "(a) The presence of mercenaries within the Bosnian Muslim army and their activities in the territory of Bosnia and Herzegovina have been

registered in the following locations: the village of Biljosevo (between Kakanj and Zenica), Tuzla, Sarajevo, Vucilovac (bridgehead Orasje), Zenica, Travnik, the village of Mehuric (municipality of Travnik), Zeljezno Polje (north of Zenica), Kakanj, Zivinice, Nemili, Bistricak, Arnauti (the villages in the vicinity of Zenica), the village of Dobrinja near Kakanj, the Banovici, the village of Kalosevac near Tesanj, the settlement of Nedzarici in Sarajevo, Zavidovici, Buzim (western Bosnia), Gradacac, the village of Bistrac near Tuzla, the settlement of Dobrinja 3 in Sarajevo, the village of Zorovici on Mount Igman, Konjic and Mostar.

(b) The existence of the following units consisting mainly of mercenaries from the Islamic countries ('mujahidin') and a small number of local extremists has been established:

'International brigade' in Pazaric, comprising about 600 mercenaries, predominantly from Islamic countries, with a small number of criminals from Germany, France and other European countries. Members of this brigade carried out the subversive action on 23 August 1994, in the village of Babin Do on Mount Igman, killing three and capturing two Bosnian Serb soldiers;

A company-strength unit is engaged in combat operations within the 37th division (Tesanj), most frequently in the direction of the village of Kalosevici-Vitkovci;

A reconnaissance/subversive detachment within the 32nd division (Zavidovici) participated in all offensive actions in the direction of southern parts of Mt. Ozren;

A company-strength unit deployed in the area of the village of Bistricak (broader area of the headquarters of the 33rd division) has participated in all offensive actions of this division in the direction Sarici-Blatnica-Teslic;

A reconnaissance/subversive detachment ('El Mujahidin') based in the village of Mehuric has been active within the 7th Bosnian Muslim army corps in the area of Mt. Vlasic;

A reconnaissance/subversive company-platoon deployed in the area of Banovici took part in offensive actions in the direction of Vozuca;

'Iranian Revolutionary Guard' battalion sent to Bosnia and Herzegovina in May 1994 with large quantities of weapons and military equipment. The battalion participated in the planning and carrying out of individual terrorist actions in the territory controlled by the Bosnian Muslim army with the aim of enforcing and strengthening fundamentalist rule and liquidating 'disobedient' Muslims and 'war criminals';

'El Fatah' unit numbering 150 terrorists quartered in the settlement of Bistrik in Sarajevo;

'Dervish Order', in Sarajevo, numbering about 70 terrorists;

'Suleiman Fatah' unit numbering about 50 terrorists, active in one area of the settlement of Dobrinja in Sarajevo and Pazaric;

'Al Fatah' unit numbering about 50 terrorists, active in the settlement of Nedzarici in Sarajevo;

'Musafiri', numbering about 100 terrorists, located in the area of Ruzim, western Bosnia;

'Black Mambas', numbering about 100 terrorists, engaged in offensive operations in the area of Gradacac;

'Shehits', mercenaries from Pakistan and Kuwait, numbering about 70 terrorists, active from the area of Tuzla;

'Allah's Followers', numbering about 150 terrorists, active in the zone controlled by the First Corps of the Bosnian Muslim army.

(c) In addition to the units consisting predominantly of mercenaries, groups of mercenaries or individuals from foreign countries are taking part in the following regular units of the Bosnian Muslim army:

Seventh Brigade, based in Zenica, used exclusively for offensive operations;

Fourth Light Brigade from Konjic ('Muderiz'), used exclusively for offensive operations;

Special unit of the Ministry of the Interior of the 'Republic of Bosnia and Herzegovina', named 'Swallows', is engaged in offensive operations in the zones of the 1st, 2nd, 3rd, 4th and 7th corps;

First brigade, named 'Black Swans', based in Kakanj;

The following special units located in Zenica: 'Manoeuvre', 'Cancar', 'Guerilla', 'Green Legion' and 'Jimbo'.

(d) Mujahidin who are participating in the units of mercenaries in Bosnia and Herzegovina are recruited mainly in Islamic countries (Turkey, Iran, Pakistan, Malaysia, Saudi Arabia, Kuwait, Libya, etc.) but also in Western European countries (France and Germany in particular). In addition to the intelligence services of those Islamic countries, the intelligence services of some other countries, such as Albania, Austria, Croatia and Slovenia, also participate in the recruitment of mujahidin and their transfer to the territory of Bosnia and Herzegovina. Training centres have been set up in Slovenia, where mercenaries have received training before being dispatched to the territory of Bosnia and Herzegovina.

The Mosque in Zagreb, headed by Sefko Omerbasic, directly cooperates with the organizers and those who recruit mujahidin and dispatch them to Bosnia and Herzegovina. The activities of mujahidin in

the territory of Bosnia and Herzegovina are coordinated by one Abu Aziz, who acts as commander of mujahidin. It is also known that command posts in mercenary units are held by the following mujahidin: Abu Aiman, Hajibi, Mazan Ali Fussain, Nasser Al Niva, Abdullah Al Suvajid, Abdul Aziz Al Sead, Al Kihasheb."

II. LOCATION OF MERCENARY ACTIVITIES

17. Throughout the first 50 years of its existence, the work done by the United Nations to promote peace, collective security and the defence of human rights has been arduous, frequently misunderstood and opposed in places where violence and armed conflict have intermittently prevailed. Violence in contemporary society has undermined fundamental rights such as the right to life, liberty and physical integrity and the rights of peoples. Violence, in conjunction with intolerance, has led to the outbreak of numerous armed conflicts throughout the second half of the twentieth century. So many millions have been killed or maimed, or are missing, refugees, internally displaced or orphaned, that the situation as a whole has repercussions on international peace, and makes it incumbent on the United Nations to strengthen its activities to ensure world peace and security.

18. The numerous references to such situations in the Special Rapporteur's reports are due to the obse_ved fact that, in most cases, there is a close connection between such conflicts, the way in which they come about and the use of mercenaries by one or all of the parties involved in the conflict. This should be borne in mind by United Nations bodies, since the presence of mercenaries in armed conflicts tends to make them longer-lasting, more serious and bloodier. Admittedly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has yet to come into force, but none the less, despite the provisions of article 47 of the 1977 Additional Protocol I to the Geneva Conventions of 1949, mercenaries are very actively involved in armed conflicts or are entrusted with actively encouraging them, depending on the aims and interests of those who hire and finance them.

19. This statement is neither gratuitous nor exaggerated; it is based upon proven incidents in a number of armed conflicts. Mercenaries exist and operate as groups of professionals selling their skill in war and violence. Whether individually or through criminal organizations, mercenaries perpetrate acts of violence which ruin human lives, cause material losses and hamper economic activity; they also carry out terrorist attacks, which more than once have touched off or aggravated conflicts, with catastrophic results for the peoples affected by them. Mercenary activities have been duly confirmed in various armed conflicts, and also in acts of international terrorism; regardless of the form they take, they are unlawful and punishable. There are international standards, resolutions and declarations by the organs of the United Nations whose purpose is to define a type of human behaviour as mercenary and to condemn it accordingly. Any inadequacy or discrepancy in the interpretation of the existing rules should be invoked not as justifying mercenary acts and behaviour, but as calling for increased clarification, precision and refinement of the standards of national and international law to combat the activities of mercenaries.

20. Mercenaries generally deny that this is what they are, claiming altruistic, ethnic, nationalistic, ideological or religious motives in order to disguise the true nature, according to international law, of their role. In reality, these arguments are applicable in the case of volunteers, linked altruistically to a cause they consider just but cannot properly be invoked by a mercenary. Ideological factors, the concept of "professional soldier" and psychological fixations may play a part in his personal make up but in concrete terms, it is all a question of money, pay and lack of scruples, which add up to the hallmark of the mercenary. Mercenary activity is paid. Hired mercenaries attack and kill for financial gain, in a country or conflict which is alien to their own nationality. The historical record, the complaints which have been submitted and the cases of mercenary activity which have been analysed by the Special Rapporteur show that the mercenary is an expert in warfare and in the illicit or even criminal activities for which he is hired and receives a considerable sum of money. He usually adopts ideologies which are extremist, radical and distinctly intolerant, but he commits criminal acts against the most basic rights of persons and peoples because he is directly motivated by financial gain.

21. In addition, it should be mentioned that mercenaries, and those organizations that enrol and train mercenaries in order to supply them on what is a criminal market, are directly related to unlawful international aims of Governments, which never act openly and will never acknowledge their responsibility in the hiring of mercenaries. However, the absence of a public and official admission does not prevent the truth from being known. The mercenary is the resource used in order to avoid being identified as the aggressor or participant in an internal conflict, or as the instigator and perpetrator of a criminal attack in a third country.

A. Armed conflicts and mercenary activities

22. Armed conflicts, wherever they may occur, undermine peace and should be avoided. The armed conflicts that have taken place during the second half of the twentieth century have been among the main concerns of the United Nations, since they have affected its mission of maintaining peace, friendship and cooperation among States. In addition, armed conflicts threaten the political stability of constitutional Governments and inflict serious damage on the economies of the countries concerned; they lead to recession and poverty, and are generally accompanied by massive human rights violations. The phenomenon of mercenary activity is most clearly apparent in the context of armed conflict. It has been noted that, in situations of armed conflict, professional soldiers whose job situation has deteriorated or fails to meet their expectations in terms of income may accept proposals that turn them into mercenaries. Today, it is impossible to deny the existence of private entities and public bodies which, under a legal cover, conduct clandestine criminal operations as a parallel activity by hiring people who, in exchange for payment, agree to participate in the perpetration of unconscionable and illegal acts.

23. Although involvement in armed conflict is the best known form of mercenary activity, it would be a mistake to believe that the latter is confined to such situations. In fact, this illicit activity takes a variety of forms. For example, a mercenary may lend his services for the perpetration

of criminal acts on behalf of a particular Power or group that wishes to cause damage in another country while using the person recruited to cover its tracks. There have also been infamous cases in which State intelligence authorities or security forces, opposition groups, armed domestic resistance movements or criminal organizations hire mercenaries to engage in illegal actions such as forming paramilitary forces for purposes of repression, organizing death squads or providing military protection for illicit drug-trafficking, smuggling or arms-trafficking, etc.

24. Organizations that recruit such persons work with government agents or with groups that are parties to a conflict, making the necessary connections and helping to establish a criminal alliance between recruiter and recruit. In some cases, legal devices are used to conceal the nature of the assignment or to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Although the use of such a device conceals the mercenary's real status, information such as the origin of the contractual relationship, the payment, the type of services agreed upon and the simultaneous use of other nationalities and passports may serve as evidence in establishing the true nationality of persons involved in an armed conflict who are justifiably suspected of being mercenaries.

25. In the years immediately following the Second World War and at a time of decolonization throughout the world, mercenaries mainly operated in Africa, where they were used to prevent countries from achieving independence, to foment secession and to protect the apartheid regime. There is evidence indicating that there are still many mercenaries in Africa. Today, mercenary activities are associated not with a particular continent but with the existence of armed conflicts and of State or private forces all over the world which do not hesitate to use this instrument to achieve specific criminal aims.

26. Generally speaking, mercenaries are former soldiers who compulsively identify with the job of making war, pretend to be fanatical practitioners of a given ideological option and are usually intrinsically intolerant or violent. The aggravating factor is that their participation is linked to the bloodiest aspects of a conflict and to crimes against human rights. Moreover, the financial considerations and desire for illicit gain through looting which are associated with their participation may be decisive in prolonging the conflict. The mercenary's interest lies not in peace and reconciliation but in war, since that is his business and his livelihood. This is why, when wars end or become scarce, mercenaries tend to involve themselves in other illegal activities.

27. The Special Rapporteur's previous reports have referred to foreign mercenaries involved in actions to destabilize constitutional Governments or in drug or arms-trafficking or international terrorism. Although these reports do not claim to establish a classification of mercenary activities, it is important to take into account the wide range of situations in which this phenomenon is observed, since it affects the sovereignty, self-determination, stability and security of States, as well as the human rights of their inhabitants.

28. The activities normally assigned to mercenaries may be carried out by nationals or by foreigners who live in the country concerned. A point at issue is whether their illicit activities, which can do serious harm to a country or Government, should be considered mercenary if recruitment, training and payment are involved. Currently, despite these factors, cases such as these are not considered to involve mercenary activities as such, but acts that can be prosecuted as ordinary offences under the relevant domestic legislation. According to international provisions on the question, foreign nationality is a prerequisite for classifying an offender as a mercenary. In any case, the possibility of changing this criterion should be analysed and debated with a view to revising current international provisions on the subject. In the light of experiences where nationality has been used to mask the mercenary nature of illicit activities engaged in by a Power that recruits, prepares and pays an individual to perpetrate a criminal act against another country, its Government, its property or a given sector of its population.

29. According to this criterion, an irregular armed group engaging in terrorism may easily become a mercenary group by travelling to the territory of a neighbouring State in order to cover and give protection to a gang of drug traffickers, or to occupy a portion of foreign territory, removing it from the authority of the sovereign State. Situations such as these have been observed in recent decades. Likewise, there may be cases in which paid assassins or gangs of criminals are hired to commit crimes outside the territory of the State whose government agents recruit them to act against its own nationals, but cannot be classified as mercenaries under the legislation of the country in which the crimes are committed. However, this would not prevent the act of the recruiters from being classified as illegal payment of mercenaries to perpetrate acts which are prohibited and punishable under international law. In all these respects, there is a vacuum in the criminal legislation of most countries. This vacuum facilitates prohibited operations that involve mercenaries.

B. Cooperation among States in preventing mercenary activities

30. The next few paragraphs contain information and analyses that may serve as a basis for formulating policies to prevent and combat mercenary activities.

31. The first observation that can be made on the basis of studies of the issue is that mercenary activity is a recurrent phenomenon that can arise anywhere in the world in the context of an existing armed conflict or for the purpose of causing one. Mercenaries may also be present in the absence of armed conflict, in connection with the perpetration of criminal attacks that cause material damage, affect the lives of individuals or destabilize the Government of a particular country. While mercenaries are typically present in armed conflicts, it would be incorrect to limit the description to those cases alone, since it applies to any situation in which the sovereignty of States, the self-determination of peoples, political stability and the human rights of populations are affected in a premeditated fashion by operations in which the active agent is a foreign mercenary specially hired to carry out unlawful criminal acts. This factor is directly connected with many terrorist attacks which mercenaries are hired to perpetrate.

32. While it is true that a number of African countries have suffered most from the criminal action of mercenaries in recent decades, this should not lead to the erroneous conclusion that there are or have been mercenaries only in Africa. The facts show that any country can be the victim of mercenary action. Moreover, mercenaries come from a variety of countries; they are not organically linked to any State, although to operate they often form temporary alliances with intelligence agencies or government security forces. The latter use mercenaries, or the organizations that recruit and train them, to carry out acts of sabotage and hostility against or within a third State. Such operations are usually secret and covered up to enable the Government which is really behind the attack publicly and officially to deny it and to avoid being held responsible for it.

33. Another issue is that there are situations where a legal vacuum or loophole permits the existence, in some countries, of associations legally registered, as security services companies which offer contracts freely to people who want to work as mercenaries, without the act of promoting, advertising or signing such a contract being regarded per se as illegal and subject to prosecution. In these cases, the legal loophole is that the law guarantees that the market may operate freely and that people may be recruited freely. The person who recruits a potential mercenary is simply an intermediary and is not committing an act that is illegal and criminal per se, since it does not necessarily follow, or it cannot be proved, that the mercenary will receive money to commit a crime: the contract is signed in a place other than where the criminal act will occur and the country's laws do not classify mercenary activity in a separate category which automatically links the name of the mercenary and his signing of a contract with the commission of a formally defined offence. This situation calls for careful investigation and monitoring of market activities related to the recruitment of persons for unspecified services, which constitute a traffic that culminates in objective damage in a territory other than the one in which the contract was made and jeopardizes the sovereignty of a third State, peoples' lives, the economy and self-determination.

34. To prevent mercenary activities, States should consider, inter alia, the possibility of withdrawing the operating licences and permits of entities that have hired mercenaries to engage in illegal activities, refusing to issue passports and visas to mercenaries, prohibiting them from passing through the territory of other States, declaring illegal and closing down associations and organizations that under various guises freely promote and offer training and contracts to mercenaries, etc.

35. Most mercenaries are former members of the regular armed forces of a country and, as such, have taken part in military conflicts. In other words, it is their job to make war and it is for this very reason that their services are sought. From this standpoint the unemployment they face when they are repatriated or retired from the regular forces, as well as certain personality changes they have undergone as a result of warfare, may contribute to their becoming mercenaries. However, States could keep this dangerous extreme under control by agreeing on a policy of prevention of mercenary activities involving the exchange of information and the provision of follow-up observation and care for people who have developed a tendency towards aggressive behaviour. They could also implement a policy to promote

employment and psychosocial care for people with problems resulting from their participation in warfare, and establish a legal framework for the activities of groups of former combatants to prevent them from going to extremes such as glorifying war, fostering intolerance or adopting ideologies which cultivate violence and military interventionism.

36. Certain illicit activities, such as trafficking in drugs, people and arms, smuggling and terrorism, are related to the recruitment of mercenaries. Such acts may occur either in connection with armed conflicts or independently of them. In both cases, it has been found that gangs engaging in these activities require a military component to serve on security missions, to move merchandise, to fly aircraft and, if the need arises, to fight the regular forces that are protecting the sovereignty of the State affected by these illicit acts. States therefore have an interest in preventing bands of mercenaries from assembly or operating within their territory by enacting laws that criminalize mercenary activities and taking legal action to suppress those activities and everything conducive to them. Where mercenaries are former members of the armed forces or the police, this should be considered an aggravating circumstance and the penalties should be more severe.

37. Going further into the matter, there must be no attempt to justify mercenaries in the media or any misconceptions regarding this type of behaviour. A mercenary is neither a hero nor the consummate romantic guerrilla, but a criminal whose acts are associated with the vilest crimes against life. The State and society must become aware of, prevent, punish and morally condemn mercenary activities. At the same time national legislation must be very harsh on State services such as intelligence or security services, or authorities with repressive tendencies, or private totalitarian-minded associations which, resorting to markets where mercenaries are available, recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression or to the assassination of political, religious or other opponents. Unfortunately, such things happen in today's world and are related to the presence of foreign mercenaries.

38. Despite the already complex nature of this phenomenon, situations arise which cannot be classified under the heading of what the present state of international law describes as mercenary activities. There is a tendency to use the term extremely loosely in ordinary conversation about any adversary who is presumed to indulge in immoral conduct and be partial to ill-gotten gains. An examination of situations involving the right to sovereignty and self-determination reveals the existence of aspects that do not precisely fit, the description of mercenary activities, although other factors can be observed, such as criminal behaviour, payment or involvement in a conflict on behalf of a third party, etc. This fact should stir the United Nations, regional organizations and States themselves to consider this question more deeply with the aim of achieving greater effectiveness in the prevention of mercenary activities.

39. To take a hypothetical example, what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary and acts for a third State or the other side in a domestic armed conflict? What steps should be taken against a person of dual nationality one

of which is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third party? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? There is no clear, unequivocal and uniform answer to these questions, which are used to disguise a person's mercenary status.

40. A case-by-case analysis might well bring to light other situations, which in practice would reopen the discussion on the effectiveness of domestic and international instruments intended to prevent, classify and punish criminal acts in which the aggravating circumstance is that they were committed by an agent presumed to be a mercenary.

III. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

41. The issue of peace and respect for self-determination, the sovereignty of States and human rights in Africa has been raised in the reports submitted by the Special Rapporteur, who considers it to be closely related to the rationale for his mandate. As a result of the policy of apartheid, racial discrimination, political instability or outbreaks of armed conflict, a number of African countries have suffered from the presence on their territory of foreign mercenaries who, through their illicit activities, interfered with the exercise of the right to self-determination, participated directly in serious violations of human rights and undermined the stability of constitutional Governments in the region.

42. In his earlier reports, the Special Rapporteur described the situation in various African countries which at one time or another have suffered the extreme cruelty of mercenaries hired by third parties to undermine their right to peace, security and political stability. Such was the case in Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia and Zimbabwe. In more than one case, the racism component and support for the apartheid system have been two characteristics of mercenary activities. For this reason, the Special Rapporteur's reports have also referred to the situation prevailing at the time in South Africa, since it appears that a number of mercenary activities have been linked to efforts to strengthen and maintain the apartheid regime and have involved officials of that regime.

43. The present situation, particularly in southern Africa, has changed substantially. In South Africa, the apartheid regime has been dismantled and a multiracial, multiparty constitutional system is leading the country towards a consolidated and modern democracy, the first expression of which at the local level was the holding of the first multiracial municipal elections on 1 November 1995. In Angola, Mozambique and Liberia, the domestic armed conflicts have come to an end and been replaced by peace processes which are expected to lead to national reconciliation and lay the foundations for the transition to democracy. In the other countries referred to in the preceding paragraph, the situations involving mercenary activities have been resolved. In presenting this report, the Special Rapporteur reiterates his support for, and solidarity with, the peace processes in Angola, Mozambique and Liberia and

with the consolidation of the democratic, constitutional regime established in South Africa. He is confident of the support of the international community in ensuring that the human rights and self-determination of those peoples will never again be disrupted by mercenary activities.

44. Notwithstanding the progress noted in southern Africa and the more recent peace agreements in Liberia, other regions have suffered outbreaks of serious political instability marked by new mercenary acts of aggression. Cases in point are the Comoros and Sierra Leone, which are dealt with in separate sections of this chapter (paras. 48-66).

45. In the case of the Sudan, the civil war between government forces and the Sudan People's Liberation Army (SPLA), and between the various factions of the SPLA itself, is affecting the most basic living conditions of the population, while in the south of the country a guerrilla force, whose intolerance has led it to commit acts of violence against its opponents, continues to resist the regime. The Special Rapporteur cannot remain silent about reports in the international press and complaints he has received personally in the course of his work at the Centre for Human Rights in Geneva concerning the existence of paramilitary training camps in some parts of the Sudan and the failure of the government authorities to ban them. The training in these camps is reportedly carried out by experienced foreign mercenaries and some of the trainees are said to have been involved in acts of international terrorism.

46. To sum up, some African countries have continued to be affected in recent years by situations of political instability, almost always accompanied by armed violence. Special attention has been devoted to the cases of Burundi and Rwanda, and United Nations missions have been despatched to those countries in view of the extreme gravity of the situation there. Cameroon, Chad, Djibouti, Niger, Togo and Zaire have been mentioned in earlier reports of the Special Rapporteur in connection with the presence of mercenaries. The Special Rapporteur has received no up-to-date reports of effects on the populations of those or neighbouring countries. Attention was also given to the grave situation in Somalia, where the war between armed factions representing clans and sub-clans led to the institutional overthrow of the State. Lastly, in Mali, despite the National Peace Agreement concluded in April 1992, clashes continued between government forces and the Tuareg rebels, especially in the regions of Niafunké and Gao.

47. The above-mentioned conflicts infringe the human rights of the African peoples and impede development activities. The presence of mercenaries, where it is a factor, further increases these peoples' suffering. The international community should give further thought to the background and habitual course of such conflicts, and support African efforts to secure rapid, effective agreements guaranteeing the right to self-determination, observance of human rights, democracy and development for all peoples who, despite the attainment of independence some years ago, are unable to find peace with justice and development, mainly because of violence, foreign interests and armed conflicts.

B. Islamic Federal Republic of the Comoros

48. On 28 September 1995, the Islamic Federal Republic of the Comoros was again attacked by mercenaries who once more seriously infringed the right of the people to self-determination and the constitutional stability of the country. As on earlier occasions, the coup was led by the French mercenary, Bob Denard, whose real name is Gilbert Bourgeaud and who, at the head of a handful of 20 or so mercenaries of various nationalities, held President Mohamed Said Djohar hostage in a barracks near the presidential palace, seized the radio and television stations and, with the support of a few hundred Comorian soldiers, managed to take control of the capital, Moroni, for a few days.

49. After a week of national confusion and uncertainty, the Prime Minister of the Comoros, Caambi-El Yachourtu, who had taken refuge in the French Embassy, prevailed upon France to send troops to the Comoros under the 1978 Franco-Comorian defence agreement in order to put an end to the foreign aggression and restore the rule of law. In connection with this legitimate intervention by France, the French Minister for Foreign Affairs, Mr. Hervé de Charette, said that, in the normal course of events, Bob Denard would be placed under arrest. On 5 October, the French military force of just under 1,000 men gained control of the Moroni airports and gradually the whole city, while Prime Minister Caambi-El Yachourtu announced the formation of a 12-member Government of national unity. Realizing that further resistance was futile, Bob Denard, who by then controlled only the Kandani military barracks where he had taken refuge, surrendered to the French forces and was subsequently taken to the island of Reunion. Denard, who is charged with assassination of a President of the Comoros, was serving a five-year conditional sentence for his part in a mercenary attack on Benin in 1977; it is therefore somewhat surprising that he managed to get out of France to lead another coup in the Comoros.

50. Because of the sentence he was serving, Denard was not supposed to leave France, where charges were also pending against him for the assassination of the President of the Comoros, Ahmed Abdallah Abderemane, on 26 November 1989. Consequently, the judge in charge of the case, Chantal Perdrix, issued to Interpol an international warrant for Denard's arrest. Denard was taken prisoner on 5 October 1995 by the French force which put an end to the mercenary coup and was handed over to the appropriate authorities for trial by a French court.

51. With regard to the situation in the Comoros, the Special Rapporteur recalls that the mercenary attack on the country on 26 November 1989 was dealt with in his fifth report (E/CN.4/1990/11). Paragraphs 26, 27 and 28 of that report summarize the Special Rapporteur's correspondence with the Government of the Comoros and refer to his readiness to extend cooperation and to visit the Comoros in order to shed further light on the matter. The report also states that the Special Rapporteur wrote to the Permanent Representative of France to the United Nations Office at Geneva recalling French assistance in overcoming the mercenary attack led by Denard and asking about Denard's current legal status vis-à-vis the French courts. Finally, the Special Rapporteur wrote to the Government of South Africa regarding the fact that Denard had taken refuge in, and been temporarily admitted to, that country.

In chapter VIII of the same report entitled "Situation in the Comoros", paragraphs 128 to 132 described in detail the mercenary attack on that country in November 1989, the assassination of President Abdallah and the responsibility of the mercenary Bob Denard for acts affecting the self-determination and human rights of the people of the Comoros. In addition, paragraph 184 contained a recommendation to the Commission on Human Rights to vigorously condemn the mercenary attack on the Comoros, express support for the sovereign rights of the people of the Comoros and welcome the French initiative which helped to bring the mercenary attack on the country to an end and, at the same time, point out the need for an exhaustive investigation of the causes of, and responsibility for, this mercenary act, as well as the legal situation of the mercenaries who have been publicly accused of perpetrating it.

52. The Commission adopted the proposal in part. In paragraph 1 of its resolution 1990/7, it condemned mercenary activities which, as in the case of the Comoros and other countries, are intended to destabilize or overthrow Governments. In paragraph 10, it reaffirmed the right of all countries to non-interference in their internal affairs and, in paragraph 14, requested the Special Rapporteur to continue to study credible and reliable reports of mercenary activity in African countries.

53. In his sixth report, submitted to the General Assembly in October 1990 (A/45/488), the Special Rapporteur again referred to the question of the mercenary attack on the Comoros. Paragraph 11 of the report reproduces the communication received from the then Permanent Representative of France to the United Nations Office at Geneva on 26 January 1990 which, referring to Denard's legal status vis-à-vis the French courts, said that "a warrant has been issued for his arrest on charges of conspiracy. He will be brought before a court as soon as he enters French territory". A subsequent letter dated 4 June 1990 also stated: "A criminal complaint relating to the murder of President Abdallah was filed with the French courts and is going through the normal channels". Paragraphs 13, 14 and 15 of the report referred to the exchange of correspondence with the Governments of South Africa and the Comoros designed to shed light on the mercenary attack and determine the whereabouts of Bob Denard and other mercenaries granted temporary residence in South Africa. Paragraphs 50 to 53 described the status of the question and the instability prevailing in the Comoros. On 18 and 19 August 1990, there was a further, abortive, coup attempt in the Comoros. Those responsible were also mercenaries, namely, Max Veillard (alias Servadac), Vincent Sterk and Patrick Klein, according to information provided by President Said Mohamed Djohar's Government.

54. In his report to the forty-seventh session of the Commission on Human Rights (E/CN.4/1991/14), the Special Rapporteur again referred to the attack on the Islamic Federal Republic of the Comoros in 1989, describing in detail the steps which he had taken (paras. 67 to 76). Special emphasis was given to the statement by President Said Mohamed Djohar at the Summit Meeting of the Organization of African Unity (OAU) in July 1990 in which, referring to mercenary activities, he said that the problem was "a major concern of our Organization, which must find appropriate ways and means of dealing with it and be ready to respond at all times". The Special Rapporteur's report also referred to the appeal by the Comoros delegation to the General Assembly to

take appropriate measures to ensure that "the Comoros are never again subjected to the scourge of mercenarism and that existing networks are dismantled throughout the world". In accordance with the study conducted, the Special Rapporteur noted in his report the need to support the self-determination of the people of the Comoros and warned against any further attempted violation of the sovereignty of the Comoros.

55. Finally, in his report to the fiftieth session of the Commission on Human Rights in January 1994 (E/CN.4/1994/23), the Special Rapporteur reproduced the letters exchanged with the then Permanent Representative of France to the United Nations Office at Geneva regarding the legal status of Bob Denard in France and the possibility of interviewing him to obtain more detailed information on his repeated mercenary activities in various African countries. In a letter dated 1 October 1993, the Permanent Representative informed the Special Rapporteur that, on 5 April 1993, Denard had been sentenced by the Paris Correctional Court, on a motion to vacate, "to five years' imprisonment (suspended) for criminal conspiracy in connection with the events that occurred in Benin in 1977" and that he had "been released under judicial supervision, in connection with the examination proceedings conducted before the Paris Court of Major Jurisdiction, by the examining magistrate, Mrs. Perdrix, following the assassination on the night of 26-27 November 1989 of the President of the Islamic Federal Republic of the Comoros, Mr. Ahmed Abdallah". The communication concluded by stating that "the Government of France will not fail to keep you informed of the judicial action taken in this case, which is sub judice during the examination stage".

56. The extensive references to the events of 1989 in the Comoros and to the steps taken regarding the need to shed light on them, to strengthen support for the self-determination of the people of the Comoros and to bring to justice the mercenaries who staged the coup and assassinated President Abdallah, for which they went unpunished, are clear indications of the concern felt by the Commission on Human Rights and the international community. Like many small and island States, the Comoros are vulnerable to outside attack and military operations in which mercenaries are actively involved. Respect for its sovereignty and vigilance on the part of the international community are therefore essential. The risk of a further mercenary attack on a country which has already suffered 17 coup attempts in 20 years should be taken into account in devising a set of measures to strengthen the self-determination of the people and the sovereignty of the State.

57. Unfortunately, the prediction of a possible further mercenary attack on the Comoros was fulfilled on 28 September 1995, the ringleader being the French mercenary Bob Denard, who had evaded the judicial supervision to which he was subject in his native country, in circumstances as yet unclear or unknown to international public opinion.

58. In any event, when he learned of the mercenary attack on the Comoros, of the events immediately thereafter, when the timely and effective intervention of French forces put an end to the attack, and of Denard's surrender to them, the Special Rapporteur not only condemned the attempted coup in his statement to the Third Committee of the General Assembly on 16 October 1995, but also wrote to the Governments of the Comoros, France and South Africa. In his

letter to the French Minister for Foreign Affairs dated 5 October 1995, he requested information on the circumstances, if known, which had enabled Denard to leave France, although he was prohibited from doing so, for the Comoros and to take part in a further mercenary operation. In the substantive part of his letter, he stated the following:

> "I have in the past had an exchange of correspondence on these questions with the French Government, to which I expressed my concern about the very grave danger represented by international criminals whose mercenary activities are a matter of record. I should be grateful to your Government for information on the circumstances which enabled Bob Denard to avoid serving the sentences imposed on him, to leave French territory, and to organize and carry out a coup in the Comoros last September with the support of other mercenaries recruited and trained by him. I should also be grateful for information on the measures which your Government intends to take to prevent any recurrence of such acts and ensure that the sentences imposed by the French courts on Denard and other mercenaries convicted for the same acts, such as Jean-Paul Guerrier and Dominique Malacrino, do not remain a dead letter and are actually carried out."

59. The purpose of the letter to the South African Minister for Foreign Affairs, dated 5 October 1995, was to request any information available to the Government on the alleged presence of Denard and other mercenaries in South Africa prior to the coup d'état in the Comoros. The substantive part of the letter is reproduced below:

> "According to reports received by this office, after participating in an earlier coup d'état in the Comoros on 26 November 1989, in the course of which the President of the Republic, Ahmed Abdallah Abderemane, was killed, Bob Denard took refuge and resided in South Africa, leaving the country on 1 February 1993 to hand himself in to the French authorities. Despite being given a five-year suspended sentence by the Fourteenth Paris Correctional Court in France, Denard reportedly returned to South Africa to complete the preparations for his further coup d'état in the Comoros.
>
> In view of these allegations, I would ask Your Excellency's Government to provide me with information on the legal status of Bob Denard in South Africa from December 1989 to January 1993 and on his presence in the country and the activities carried out prior to the recent coup d'état in the Comoros. I would be particularly interested in receiving information on the presence and legal status of other foreign mercenaries in South Africa, their activities and any measures which your Government may have taken in that connection."

60. Finally, on 1 December 1995, the Special Rapporteur wrote to the Permanent Representative of the Islamic Federal Republic of the Comoros to the United Nations requesting detailed information on the mercenary attack of 28 September and events in the days immediately following, and expressing support for the self-determination of the people of the Comoros and his readiness to visit the country if necessary to complete the investigation into the mercenary attack. The last part of the letter read as follows:

"I should not like to conclude without assuring you of my full support for the exercise of self-determination by the people of your country and expressing the hope that mercenaries will never again be used to undermine that right or the human rights of the people. I should also like to inform you of my readiness to visit your country in order to conduct an on-the-spot investigation into these most serious events, for which I would need an official invitation from your Government. The details, duration and dates of such a visit would be arranged later through the Centre for Human Rights."

61. At the time when the drafting of this report was completed (15 December 1995), the Special Rapporteur had received no written reply to the three letters in question, but had held an information meeting with the Permanent Representative of France to the United Nations Office at Geneva. The Special Rapporteur is nevertheless convinced of the resolve of the three Governments to close ranks in support of the self-determination of peoples and of the protection of human rights and the sovereignty of small States, which are clearly vulnerable to outside attacks and mercenary operations such as those suffered by the Comoros on a number of occasions. In the present case, it is to be hoped that an effective and exemplary judicial sentence will be imposed on the mercenary Bob Denard for his repeated criminal activities against a number of African peoples. Such a sentence is essential, not only because his conduct calls for punishment, but also as a warning that mercenary activities will not go unpunished and a guarantee to the Comoros that the mercenary attacks which, in recent years, have continually violated the right of the people to self-determination and the country's political stability will cease once and for all.

C. Sierra Leone

62. Sierra Leone is in the grip of an internal armed conflict which broke out in March 1991 when an opposition group known as the Revolutionary United Front (RUF) was formed as an armed resistance movement and launched an invasion from neighbouring Liberia with a view to occupying part of the southern and eastern regions of the country. The conflict did not come to an end when, in 1992, a military-nationalist movement calling itself the National Provisional Ruling Council (NPRC), headed by Captain Valentine Strasser, seized power in a coup, suspended the 1991 Constitution and declared a state of emergency. In the last three years, government forces have won back a large part of the territory occupied by the rebel forces, but the rebels have nevertheless continued their attacks and occasionally succeeded in gaining control of some of the country's main roads.

63. In the course of the internal armed conflict, both the NPRC and the RUF rebel forces, led by Foday Sankoh, have committed serious violations of and disregarded, basic provisions of international humanitarian law. There have been reports of acts of torture, extrajudicial executions, detention of minors, murders of opponents while in detention, etc. These acts are known to the international community as they have been described in reports to human rights bodies. The civilian victims of this conflict are estimated to number in the thousands.

64. There is clear evidence of mercenary involvement in this internal armed conflict. According to information received by the Special Rapporteur, which is borne out in some respects by information published in the international press, the NPRC has strengthened its military capability by hiring mercenaries supplied by Executive Outcomes, a private company officially registered in Pretoria as a security company, but in this case said to have been paid in cash and, in particular, in the form of mining concessions, for supplying specially trained mercenaries and weapons. According to information made available to the Special Rapporteur, Executive Outcomes is involved in the recruitment, contracting and training of the mercenaries and the planning of their operations. It uses them in a variety of situations where, in return for payment, it has carried out all kinds of illegal acts. Executive Outcomes is reported to have provided Sierra Leone with about 500 mercenaries from various countries, usually paying them between US$ 15,000 and US$ 18,000 per month, depending on their qualifications and experience, in addition to providing them with generous life-insurance cover and weapons.

65. In Sierra Leone, mercenaries hired by Executive Outcomes are reported to be active in the Kono and Koidu districts and in Kangari Hills, and in Camp Charlie at Mile 91. According to the sources consulted, Executive Outcomes is receiving about US$ 30 million and mining concessions in the Koidu district for its mercenaries' operations. In recruiting mercenaries, Executive Outcomes is said to work through a network of security companies operating in various countries, soldiers of fortune and intelligence circles. Its work in Sierra Leone is said to involve the following activities: training of officers and other ranks; reconnaissance and aerial photography; strategic planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF, etc. According to the source consulted, all these activities are supervised by executives of the company. Mercenaries are hired as security personnel, although military-aircraft and helicopter pilots and engineers are also recruited.

66. In order to verify this information, although it had been corroborated by other sources, the Special Rapporteur wrote to the Government of South Africa requesting information establishing that Executive Outcomes existed and was registered and legally domiciled in Pretoria and that its executives included individuals linked with battalion 32, which had fought in Angola under the name of the Buffalo Battalion and included mercenaries, or persons who had been members of pro-apartheid paramilitary organizations. He also wrote to the Government of Sierra Leone drawing its attention to the information received on the presence of mercenaries in that country and requesting information and its views on the matter. At the time of writing, the Special Rapporteur had received no replies to his communications. In any event, this would appear to be yet another instance of an internal armed conflict in which the involvement of mercenaries prolongs and adds to the cruelty of that conflict, while at the same time undermining the exercise of the right to self-determination of the people of the country involved.

IV. PRESENCE OF MERCENARIES IN THE TERRITORY OF THE FORMER YUGOSLAVIA

67. Since 1992, the Special Rapporteur has studied various reports of the involvement of foreign combatants and mercenaries in the armed conflicts in the territory of the former Yugoslavia. In the light of this information, the Special Rapporteur dealt repeatedly with the question in earlier reports, interviewed representatives of the Republics of Bosnia and Herzegovina, Croatia, Slovenia and the Federal Republic of Yugoslavia (Serbia and Montenegro), and ultimately visited Croatia from 13 to 18 September 1994 and the Federal Republic of Yugoslavia (Serbia and Montenegro) from 19 to 23 September 1994. On the basis of these visits and of what he saw and the information he received, the Special Rapporteur requested States which had lodged complaints to submit documents containing firmer evidence. In the addendum to his recent report to the General Assembly (A/53/390/Add.1), he reproduces the letters sent to the Special Rapporteur by the Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Croatia, dated 30 June 1995, and by the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, dated 14 July 1995. In the present report, he also reproduces the texts of two letters sent to the Special Rapporteur by the Chargé d'Affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations, dated 23 October 1995, and by the Permanent Representative of that State to the United Nations Office at Geneva, dated 31 October 1995 (see paras. 15 and 16).

68. In his report to the General Assembly, the Special Rapporteur made a number of observations, as a working hypothesis, regarding the assertions submitted on the involvement of mercenaries in the armed conflicts in the Republics of Bosnia and Herzegovina and Croatia, and on the questions of volunteers, international brigade members, and the mujahidin or Islamic combatants (see A/50/390, paras. 72-74).

69. The Special Rapporteur was recently informed that two German mercenaries who had fought in Bosnia and Herzegovina in 1993 with the Bosnian-Croat forces, had been sentenced to life imprisonment by a German court in the city of Memmingen, presided over by Judge Manfred Worm. Falk Simang, a 31-year-old native of Dresden, and Ralf Mrachacz, aged 41, from Saxe-Anhalt, former members of the army of the defunct German Democratic Republic, were found guilty on 14 December 1995 of murdering two other German mercenaries. The killers, helped by another mercenary of Austrian nationality, burned the corpses of their victims so that their crimes would not be discovered. The crimes were brought to light when one of the killers bragged about what he had done on television.

70. In addition to the information and reports still being studied by the Special Rapporteur concerning the presence of mercenaries in the territory of the former Yugoslavia, the Special Rapporteur feels bound to emphasize the importance of the peace agreements formally signed in Paris on 14 December 1995 by the Presidents of the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and negotiated on the Wright-Patterson airbase in Dayton, Ohio, United States of America. The Special Rapporteur expresses the hope that

these agreements will put an end once and for all to the armed conflicts which, in the space of four years, have claimed 250,000 lives and created 3.5 million refugees and displaced persons, and that they will usher in a new period of cooperation. In this connection, the mercenaries must be forced to leave the territories of the former Yugoslavia and those accused of war crimes or grave violations of international humanitarian law and human rights must be duly tried and convicted, for their crimes must not go unpunished.

V. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

71. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in resolution 44/34 of 4 December 1989, confirms the juridical nature of the resolutions and declarations of the United Nations bodies which condemn mercenary activities and expand international regulation of the question, such regulation being at present essentially limited to article 47 of Additional Protocol I to the Geneva Conventions of 1949 and the OAU Convention for the Elimination of Mercenarism in Africa of 1977.

72. Article 19 of the International Convention stipulates that it will enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations. At the time of preparing this report, only 9 States had completed this process and become parties to the Convention (Barbados, Cyprus, Georgia, Italy, Maldives, Seychelles, Suriname, Togo and Ukraine), while 12 other States have signed it (Angola, Belarus, Cameroon, Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay, Yugoslavia and Zaire).

VI. CONCLUSIONS

73. A number of events in 1995, the most prominent of which were the attempted coup d'état in the Islamic Federal Republic of the Comoros and the armed conflict in Sierra Leone, prove that the recruitment, use, financing and training of mercenaries to commit acts that adversely affect the self-determination of peoples, the sovereignty of States, the constitutional stability of Governments and human rights are practices that still exist and cause serious harm to peoples and individuals who are subjected to mercenary aggression.

74. A number of international instruments and resolutions of United Nations bodies condemn mercenary activities. In addition, some States have introduced into their national legislation offences under which mercenaries could be liable to criminal penalties. However, the contrast with the real world, in which mercenaries are free to travel and to engage in acts which frustrate the self-determination of peoples and human rights, suggests that either the international and domestic legislative measures taken to prohibit and punish mercenary activities are as yet weak and inadequate, or that the requisite effective political will on the part of States to prosecute and punish mercenary activities is lacking. In any event, it is apparent from the unlawful acts which continue to be perpetrated by mercenaries that the impunity which they enjoy in practice fosters the recurrence of such acts.

75. From the information gathered, classified and analysed by the Special Rapporteur, it is clear that mercenary activity is not limited to the agent who actually commits the criminal act. He is merely the one who executes a wrongful act. In reality, before a mercenary is recruited and before he commits a wrongful act, there has to be an operation which has been conceived, planned, organized, financed and supervised by third parties. These may be Governments which, through covert operations, decide to take illegal action against another State or against the life, liberty, physical integrity and safety of persons, or private groups which safeguard their interests by hiring mercenaries to carry out unlawful acts.

76. Responsibility for a mercenary act extends to the agent who executes the criminal act in its final phase, but also to all those who, individually or collectively, participate in the wrongful act of using mercenaries for the commission of a crime. All this means that mercenary activity is by its very nature complex. In most cases, it neither originates from, nor concludes with, the act and responsibility of the individual deemed to be a mercenary. The possibility must always be examined that behind each act there may be concerted action involving public or private agents.

77. Vigilance on the part of States, together with the strengthening of domestic legislation to prevent organizations which generate mercenary activities from operating in their territory, are important means of achieving greater effectiveness in controlling and prohibiting mercenaries. States should, where necessary, disband any intelligence machinery which, through covert operations, enables government agents to recruit mercenaries, either directly or through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

78. The commonest reasons why mercenaries are recruited are to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, mercenary status should be considered as an aggravating factor.

79. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet specifically categorized it as a crime. At this point, the debate is focused on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the further development of international legal instruments and of the provisions of national law, Member States should strengthen their capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities. The prevention aspect is fundamental and must include such matters, as, for example, use of the open labour market in recruiting persons for unspecified activities. In any case, it has to be borne in mind that mercenary activities are considered a crime under international law and under various provisions of national legislation. Consequently, it cannot be argued that it is permissible to use the open market to recruit mercenaries.

80. Mercenaries are generally people who have belonged to the regular armed forces of a country and as such have taken part in military conflicts. In other words, it is their job to make war and it is for this precise reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated or retired from the regular forces and certain personality changes they have undergone as a result of warfare may contribute to their becoming mercenaries. The present supply of mercenaries is influenced by the existence of career military personnel whose personal situation has deteriorated as a result of the reduction in strength or dissolution of the regular armed forces to which they belonged and who have consequently joined the ranks of the unpaid.

81. The Special Rapporteur has noted the existence of cases in which recourse is had to legal devices or, more specifically, to normal legal procedures for the purpose of concealing mercenary activity. A mercenary may thus be given the legal identity of a national of the country in whose armed conflict he is involved or in which he is to undertake his criminal mission, thereby avoiding the characterization of mercenary. Although the use of this device legally conceals an individual's real status as a mercenary, information such as the origin of the contractual relationship, the payment, the type of services arranged for and the simultaneous use of other nationalities and passports may serve as evidence in establishing the true status of persons who are justifiably suspected of engaging in mercenary activities.

82. Over the last three decades, a number of African countries have suffered from the activities of mercenaries. This is true of Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Sudan, Zaire, Zambia, Zimbabwe and others. In some cases, attacks by mercenaries took place in response to the policy of support and protection for apartheid which originated in South Africa but whose ramifications and criminal activities extended to other parts of Africa and even beyond. In most of these countries, it has been possible to put an end to armed conflicts, thereby paving the way for national reconciliation, peace and the transition to democracy, which, in turn, have brought an end to complaints about mercenary activities. Moreover, the democratic multiracial and multi-party regime installed in South Africa is being consolidated, thus opening the door to a period of cooperation among the countries of southern Africa.

83. In Angola, one year after the signing of the Lusaka peace agreement, the process of assembling former combatants is continuing, and their demobilization and the formation of a new army made up of former members of the two forces which fought one another for almost 20 years is to begin shortly. However, the release of prisoners held by both forces and the departure from the country of the mercenaries who were involved in the armed conflict have yet to take place. In Liberia and Mozambique, peace processes which are due to bring about national reconciliation and to lay the foundations for the establishment of democracy have also begun.

84. On 28 September 1995, the Islamic Federal Republic of the Comoros suffered another attack by mercenary forces, who attempted to carry out a coup d'état by seizing the airports and other key installations in the capital Moroni. The forces involved in the coup comprised approximately 20 foreign

mercenaries and a few hundred soldiers from the Comoros, under the command of the French mercenary, Gilbert Bourgeaud, alias Bob Denard. This man was also responsible for the mercenary attack on the Comoros in November 1989 and had been free under court supervision in France after receiving a five-year suspended prison sentence for an earlier attack in Benin in 1977. Denard was also under investigation in France for the assassination of President Ahmed Abdallah at the time of the 1989 coup in the Comoros. It appears that his escape from France, the contacts he allegedly maintained in the Comoros and the freedom he enjoyed to recruit, train and organize mercenaries and land in the Comoros facilitated the further coup attempt which was quelled one week later through military intervention by France, within the framework of the Franco-Comorian defence agreement of 1978.

85. The Special Rapporteur has received information on the presence of foreign mercenaries allegedly participating in the internal armed conflict in Sierra Leone. The mercenaries are reported to have been recruited, trained and armed by a security company officially registered and domiciled in Pretoria. The mercenaries, who are of various nationalities and were recruited in various countries, are said to be operating in the districts of Kono and Koidu and in Kangari Hills. Their pay is reportedly between US$ 15,000 and US$ 18,000 per month, depending on their qualifications and experience, in addition to generous life-insurance cover. They are said to be responsible for the following: training officers and other ranks; reconnaissance and aerial photography; strategic planning; advising on the purchase of arms and military equipment; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the armed opposition. The company which recruits, trains and uses them is reported to have received approximately US$ 30 million and various mining concessions around the country. The Special Rapporteur is carrying out further investigations into this matter. If the details of the complaint are confirmed, they will strengthen the conclusion he has expressed on several occasions regarding the existence of international circuits and networks that trade in mercenaries in exchange for cash and other financial benefits; it is on account of this profit motive that mercenaries are increasingly present in internal armed conflicts, with serious consequences for the enjoyment of human rights by the peoples concerned.

86. In his recent report to the General Assembly (A/50/390, paras. 72-74), the Special Rapporteur made a number of observations concerning the complaints lodged about the presence of mercenaries in the armed conflicts in the Republics of Bosnia and Herzegovina and of Croatia, and concerning the questions of volunteers, international brigade members and mujahidin or Islamic fighters. The Special Rapporteur requested those who made complaints to submit more conclusive documentary evidence. In addition, in his report the Special Rapporteur drew attention to the verdict recently handed down by a court in Memmingen (Germany), sentencing to life imprisonment two German mercenaries who had fought in Bosnia and Herzegovina in 1993 and were found guilty of a double murder. He expresses the hope that the Paris peace agreements, formally signed on 14 December 1995 by the Presidents of the Republics of Bosnia and Herzegovina, Croatia and the Federal Republic of

Yugoslavia (Serbia and Montenegro), will finally put an end to four years of armed conflict and mark the beginning of a new phase of cooperation. In this respect, he believes that mercenaries should be compelled immediately to withdraw from the territories of the former Yugoslavia and that those who are accused of having committed war crimes or serious violations of international humanitarian law and human rights should be duly tried and sentenced, since their crimes should not go unpunished.

87. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only 9 States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Georgia, Italy, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 12 States have signed it. This situation has prompted the conclusion that there is a delay in the process by which Member States expressed consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

VII. RECOMMENDATIONS

88. The Special Rapporteur recommends that the Commission on Human Rights reiterate the importance of universal realization of the right to self-determination of peoples in order to promote, protect and achieve the full observance of human rights, while at the same time drawing attention to the need to strengthen the sovereignty, equality before the law and independence of States and the stability of constitutionally established and lawfully functioning Governments. In view of the persistence of mercenary activities during 1995, the Special Rapporteur also recommends that the Commission reiterate its condemnation of mercenary activities of any type or form and at any level, and of government agents or private organizations that resort to or participate in such activities.

89. Small and island States, principally those located in areas of strategic importance, are usually the most vulnerable to armed attacks in which the presence of mercenaries is a distinctive feature. Accordingly, the Special Rapporteur recommends that the Commission on Human Rights reiterate its commitment to defending the sovereignty, independence and equality of such States and the full exercise of the right of peoples to self-determination, which guarantees the promotion and effective protection of the human rights of their peoples.

90. Bearing in mind that mercenary action is not restricted to situations of armed conflict, it is recommended that the Commission on Human Rights should stress that the use of mercenaries in itself is to be condemned, both in cases where such activities are carried out in an armed conflict and in cases where there is no armed conflict and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life, safety and human rights of its inhabitants.

91. Bearing in mind the nature, forms, contractual relations and specific characteristics which make up mercenary activities, the Special Rapporteur suggests that the resolution condemning mercenary activities should also recommend that Member States include an explicit prohibition in their domestic legislation in order to prevent organizations linked to mercenaries from operating in their territories or carrying out contractual activities such as propaganda or advertising in support of mercenaries or attempts to justify their activities. They should also prohibit public authorities from resorting to mercenarism and disband any intelligence or security machinery which, through covert operations, uses mercenaries or does so through third organizations.

92. The prevention aspect is fundamental and must include such matters as, for example, use of the open labour market in recruiting persons for unspecified activities. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries. In the same way, States have the capacity to prevent their territory from being used for the training, assembly or transit of mercenaries, and to adopt measures to ensure that their financial and economic systems and agencies cannot be used to facilitate operations linked to these illicit activities.

93. Advocacy of mercenary activities, which is sometimes practised in literary works, the media and sectors of the film industry, fosters a mistaken impression as to the nature of the mercenary and his criminal conduct. Without interfering with the right to freedom of expression, the adverse consequences of mercenary activities for the effective exercise of the right of peoples to self-determination and the realization of human rights should be publicized in a suitable manner, both internationally and nationally. In this connection, the Commission should request the Centre for Human Rights to publicize the adverse consequences of mercenary activities known throughout the world. A first step towards this could be the preparation of an information booklet in the series currently being published by the Centre for Human Rights.

94. The Commission on Human Rights could also recommend that all States Members of the Organization deal very harshly with the temptation for State services, such as the intelligence or security services or authorities with repressive tendencies to resort to markets where mercenaries are available for the purpose of forming praetorian guards, death squads or operational groups devoted to the assassination of political opponents or the repression of opposition sectors.

95. The withdrawal of licences and operating permits from private entities that hire or recruit mercenaries to engage in illegal activities, refusal to issue passports or visas to mercenaries and prohibiting them from passing through State territory are some of the measures that should be applied to prevent the recruitment, hiring and movement of mercenaries. International security companies should be subject to particularly close scrutiny.

96. Bearing in mind that the elimination of the apartheid regime in South Africa, the installation of a democratic and multiracial regime in that country, and the peace processes under way in Angola, Liberia and Mozambique

are conducive to the reduction of mercenary activities in Africa, it is recommended that all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences, should be expelled from African countries, and at the same time nationals who have participated in mercenary activities should be prosecuted under provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism. It is also recommended that organizations which advocate recourse to violence should be legally dissolved and disarmed, the mercenaries in their service expelled, and the crimes committed investigated and punished to ensure that the perpetrators of these acts do not go unpunished.

97. Regarding the invasion and attempted coup d'état in the Islamic Federal Republic of the Comoros on 28 September 1995, which was carried out by mercenaries, the Special Rapporteur recommends that the Commission on Human Rights extend its support for the sovereignty and independence of the Comoros and for the observance of the right of its people to self-determination. In order to contribute to promoting and protecting the human rights of the population of the Comoros, the Commission could request the Centre for Human Rights to offer its technical assistance and cooperation services to the Comoros. It is also recommended that the Commission should support the trial of Bob Denard and other mercenaries before the competent courts, where, after judicial proceedings in which they receive all the guarantees of due process, they will be sentenced to the appropriate penalties for their successive acts of armed aggression and their repeated attacks against the right of the Comorian people to self-determination and against that people's human rights.

98. With regard to the armed conflict under way in Sierra Leone, the Special Rapporteur recommends that the Commission on Human Rights should reiterate its condemnation of the use of force and call for the immediate departure of any mercenaries from the national territory. The recommendation should include support for the full exercise by the people of Sierra Leone of their right to self-determination, which will shortly be exercised through general elections. The Special Rapporteur requests the Commission to give the greatest possible support for the investigation of the presence and activities of mercenaries in Sierra Leone, in connection with unlawful activities by security companies registered in the region, and to reiterate its full endorsement of the efforts of the African countries to combat the presence of mercenaries in Africa and to remove them from the continent once and for all.

99. Regarding the armed conflicts which occurred on the territory of the former Yugoslavia, it is recommended that the Commission should reiterate its support for the investigation of the presence of mercenaries, foreign combatants, members of international brigades, volunteers, mujahidin and Islamic combatants in those conflicts and call for the immediate departure from those territories of the mercenaries still in the countries concerned. It is also recommended that the Commission welcome the Dayton Agreements and support the judicial investigations carried out by the International Criminal Tribunal for the former Yugoslavia in the Hague concerning persons charged with war crimes, and by a number of national jurisdictions concerning mercenaries charged with various offences and violations of international humanitarian law and human rights.

100. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that the Commission on Human Rights should suggest to those States which have not yet ratified or acceded to it that they consider the advisability of speeding up this process, in order to hasten its entry into force; this will promote more effective action by the international community for the prevention, prosecution and punishment of mercenary activities and contribute to the fulfilment of the purposes and principles enshrined in the Charter of the United Nations.